

RACING AND GAMING COMMISSION [491]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, “Track and Excursion Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” and Chapter 10, “Thoroughbred and Quarter Horse Racing,” Iowa Administrative Code.

ITEM 1 clarifies the qualified agreements required to submit to the Commission for approval.

ITEM 2 extends the duration of occupational licenses to three years.

ITEM 3 requires jockeys to also be licensed prior to first post time of the race card for the day in which the horse is entered.

ITEM 4 amends definitions of “Overnight race,” “Post time,” “Purse race” and “Stakes race”.

ITEM 5 requires all on horseback to wear helmet and safety vest.

ITEM 6 clarifies instances when stewards’ decisions can be appealed.

ITEM 7 clarifies when stall positions will be given.

ITEM 8 clarifies how/when horses on veterinarian’s list are removed.

ITEM 9 clarifies the proper recording of a horse’s sex.

ITEM 10 provides clarification of what is required for a jockey’s safety vest.

ITEM 11 provides clarification of a horse’s eligibility when it appears on any other jurisdiction’s list.

ITEM 12 clarifies an instance where a horse needs to be excused by the stewards.

ITEM 13 clarifies instances of coupling.

ITEM 14 provides clarifications for entries in split or divided races.

ITEM 15 provides clarification of naming/engaging riders.

ITEM 16 provides clarification of limitations on scratches.

ITEM 17 provides clarification of required workouts.

ITEM 18 provides clarification on equipment changes.

ITEM 19 provides clarification on a valid open claim certificate.

ITEM 20 changes to the number of claims.

ITEM 21 provides clarification to transfers after claims.

ITEM 22 provides clarification of instance where stewards can disallow a claim.

ITEM 23 provides limitations on compounded medications.

ITEM 24 provides clarifications with regard to use of approved NSAIDs.

Any person may make written suggestions or comments on the proposed amendments on or before January 12, 2016. Written material should be directed to the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. Persons who wish to

convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on January 12, 2016 at 9 a.m. in the office of the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend subrule **5.4(8)** as follows:

5.4(8) *Commission approval of contracts and business arrangements.*

a. Qualifying agreements.

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to 491-11.13 are exempt from submission and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to 491-11.13

are exempt from submission and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or ~~utilities~~ an entity that provides water, sewer, gas or electric utility services to the facility.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent or if the commission approval date of an ongoing contract is more than five years old.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises.

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;
2. The amount and source of funds;
3. The nature and amount of security and collateral provided;
4. The specific nature and purpose of the transaction; and
5. The term sheet or executive summary of the transaction.

(3) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements ~~that are ongoing or open-ended~~ need only be submitted on initiation unless there is a material change in terms or noncompliance with 5.4(8) “b”(4) or to comply with 5.4(8)”a”(1)3.

b. Purpose of review. The commission conducts reviews to serve the public interest to ensure that

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.
2. Goods are distributed through a distributor located in Iowa.
3. Goods are sold by a retailer/wholesaler located in Iowa.
4. Resources are produced or processed in Iowa.
5. Services are provided by a vendor whose headquarters/home office is in Iowa.
6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.
7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

c. Related parties. Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

- (1) Any corporate officer or member of a facility's board of directors.
- (2) Any owner with more than a 5 percent interest in a facility.
- (3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

d. Review criteria. The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

ITEM 2. Amend rule **491-6.8** as follows:

491—6.8(99D,99F) Duration of license. A license issued by the commission is valid for ~~two~~ three calendar years. The license shall expire at the end of the ~~second~~ third calendar year, unless an extension is granted by the administrator.

ITEM 3. Amend rule **491-6.29** as follows:

491-6.29(99D) Time by which owner, jockey and trainer must be licensed. The owner (includes stable names, partnerships, and corporations), jockey and the trainer of a horse entered to race must ~~both~~ be licensed by the first post time of the race card for the day in which the horse is entered.

ITEM 4. Amend rule **491-10.1**, definitions of “Overnight race,” “Post time,” “Purse race” and “Stakes race” as follows:

“Overnight race” means a contest for which entries close at a time set by the racing secretary; also known as purse race ~~race for which entries close 96 hours, or less, before the time set for the first race of the day on which the race is to be run.~~

“Post time” means the scheduled ~~starting~~ time for horses to arrive at the starting gate for a contest.

“Purse race” means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse ~~and for which entries close less than 96 hours prior to its running.~~

“Stakes race” means a contest in which nomination (if applicable), entry, and starting fees contribute to the purse. No overnight race shall be considered a stakes race. Special designations or classifications for stakes races such as “Graded Stakes” or “Black Type” shall be determined by the appropriate breed registries or recognized authorities.

ITEM 5. Amend subrule **491-10.2(9)** as follows:

10.2(9) Helmets and vests. ~~A facility shall not allow a~~Any person on horseback on facility grounds ~~unless that person is~~ shall wearing a protective helmet and safety vest ~~of a type approved by the commission.~~

ITEM 6. Amend subparagraph **491-10.4(4)”a”(6)** as follows:

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final. A decision by the stewards regarding a disqualification of a horse due to a foul, interference, or a riding infraction may not be appealed. ~~for purposes of distribution of the pari-mutuel pool. The administrative standard of review for a disqualification decision is abuse of discretion.~~

ITEM 7. Amend subparagraph **491-10.4(8)”a”(3)** as follows:

(3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions on race day ~~more than ten minutes~~ before post time for each the race;

ITEM 8. Amend paragraph **491-10.4(17)”g”** as follows:

g. A horse placed on the veterinarian’s list in Iowa, bleeders exempt, may be allowed to enter only after it has been ~~removed from the list~~ approved by the commission veterinarian. Any horse placed on the veterinarian’s list will be removed from any future race in which the horse has been entered. Requests for the removal of any horse from the veterinarian’s list will be accepted

only after a minimum of three calendar days have elapsed from the placing of the horse on the veterinarian's list ~~have elapsed~~. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. Horses that are entered to race and then placed on the veterinarian's list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.

ITEM 9. Amend subparagraph **491-10.5(1)"a"(14)** as follows:

(14) Properly recording the sex of the horses in the trainer's care with the horse identifier and the racing secretary, and immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the racing secretary.

ITEM 10. Amend subparagraph **491-10.5(2)"q"(2)** as follows:

(2) A jockey's weight shall include the jockey's clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body, ~~of at least a rating of five as defined by the British Equestrian Trade Association.~~

ITEM 11. Amend subparagraph **491-10.6(1)"a"(10)** as follows:

(10) A horse appears on the ~~starter's list, stewards' list, paddock list, or Iowa~~ veterinarian's list, notwithstanding a horse appearing on the veterinarian's list as a "bleeder". A horse appearing on any starter's, stewards', paddock judge's list, or the veterinarian's list in another jurisdiction, unless approved by the board of stewards; and is removed from the list by the day of the race.

ITEM 12. Amend subparagraph **491-10.6(1)"b"(4)** as follows:

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer unless excused by the stewards.

ITEM 13. Amend paragraph **491-10.6(2)“c”** as follows:

c. Coupling. There will be no coupled entries in any race. In races, excluding stakes races, that overfill, trainers must declare preference of runners with identical ownership at time of entry. Same-owner, second-choice horses will be least preferred. A trainer or owner may not enter more than three horses in a race unless the race is split or divided.

ITEM 14. Adopt the following new subparagraph(s) **491-10.6(2)“d” (3) and (4):**

(3) A trainer shall be allowed to enter more than the maximum number of entries allowed under 10.6(2)“c” if they are declared at time of entry as “split entry only” and preference is given by the trainer for their first three entries.

(4) The racing secretary shall split an overnight race so that common ownership, identical ownership, or common trainer will divide as equally as possible between two or more races.

ITEM 15. Rescind paragraph **491-10.6(2)“l”** and adopt the following new paragraph in lieu thereof:

l. Naming/engaging of riders. Riders must be named at the time of entry. If at the conclusion of the draw of a race, a trainer does not have a rider, all riders who are not available shall be made known to the trainer at that time via phone or in person by the stewards or their designee. A trainer who does not name a rider prior to the conclusion of the draw of a race, and reasonable attempts have been employed to contact the trainer with no response, shall have an available rider engaged at the facility placed on the horse, determination of which shall be drawn by lot. Riders properly engaged as a first or second call in a race must fulfill their engagements as required in 10.5(2)“l”.

ITEM 16. Amend paragraph **491-10.6(8)“c”** as follows:

c. Limitation on scratches. No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than seven betting interests, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than seven, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. Veterinarian scratches will be preferred and accepted without regard to the number of entries.

ITEM 17. Amend paragraph **491-10.6(9)“a”** as follows:

a. When required. No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which the horse is entered. The workout must have occurred within the previous 30 days for a thoroughbred or within the previous 60 days for a quarter horse. Horses that have not started for a period of six months or more must have two published workouts, one of which must have occurred within the previous 30 days for thoroughbreds and 60 days for quarter horses. First-time starters must have at least two published workouts with one within the previous 30 days for thoroughbreds and 60 days for quarter horses, ~~and~~ be approved from the gate by the starter, and have a published workout from the starting gate.

ITEM 18. Amend paragraph **491-10.6(10)“c”** as follows:

b. *Equipment change.* No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the stewards. No licensee may add blinkers or cheek pieces to a horse's equipment or discontinue their use without the prior approval of the

starter ~~and the stewards~~. First-time starters must race with or without blinkers or cheek pieces in accordance with the gate approval card issued by the starter. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

ITEM 19. Amend subparagraph **491-10.6(18)"a"(1)"3"** as follows:

3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered with the racing secretary's office or who has not started a horse at the current meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued.

ITEM 20. Rescind subparagraph **491-10.6(18)"a"(2)** and adopt the following new subparagraph in lieu thereof:

(2) Number of claims. An ownership entity (sole owner, partnership, racing stable, corporation or owner/trainer acting as an owner) shall not claim more than one horse in a race. An authorized agent or trainer acting on behalf of an ownership entity shall not submit more than one claim in a race with or without commonality of ownership.

ITEM 21. Rescind paragraph **491-10.6(18)"g"** and adopt the following new paragraph in lieu thereof:

g. Transfer after claim.

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary.

(2) No claimed horse shall be delivered by the original owner to the successful claimant until authorized by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter; and said successful claimant becomes the owner of the horse unless voided by the stewards under the provisions of this paragraph. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards shall have no effect upon the claim.

(3) The stewards shall void the claim and return the horse to the original owner if:

1. In the event a claimed horse suffers a fatality during the running of the race, dies, or is euthanized before leaving the track.
2. The state veterinarian, during their observation of the horse coming off the track or upon arrival to the test barn, determines the horse will be placed on the veterinarian's list as unsound or lame. The stewards shall not void the claim, if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the state veterinarian determines the horse will be placed on the veterinarian's list as unsound or lame. An election made under this rule shall be entered on the claim form.

3. The race is called off, canceled, or declared no contest.

(4) Other jurisdiction rules. The commission will recognize and be governed by the rules of

any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(5) Determination of sex and age. The claimant, within 48 hours, shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. Horses that are spayed or gelded shall be properly identified as such in the program. If the claimant finds that the mare is in fact spayed or the status of a male horse is inaccurate as stated by the program, the claimant may return the horse for full refund of the claiming price.

(6) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(7) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(8) Obstructing rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse or enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

ITEM 22. Amend paragraph **491-10.6(18)"i"** as follows:

i. ~~Deceptive~~ Disallowance of claim. The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim; or if an eligible claimant improperly obtains information or access to horses by being present in the

paddock during the claiming race unless the claimant has a horse in that claiming race, as determined solely by the stewards. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.

ITEM 23. Adopt the following **new** subparagraph **491-10.7(1)”d”(6)**:

(6) No person shall possess, use, or distribute a compounded medication within the premises of the facility if there is a Federal Drug Administration approved equivalent of that substance available for purchase unless approved by the state veterinarian. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse. All compound medications must be labeled as required by law.

ITEM 24. Amend paragraph **491-10.7(1)”k”** as follows:

10.7(1)k. Non-steroidal anti-inflammatory drugs (NSAIDs).

(1) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. The level does not exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

Phenylbutazone (or its metabolite oxyphenylbutazone) – 5 micrograms per milliliter;

Flunixin – 20 nanograms per milliliter;

Ketoprofen – ~~40~~ 2 nanograms per milliliter.

2. The NSAIDs listed in numbered paragraph “1” or any other NSAIDs are prohibited from being administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter, Flunixin in a concentration below 3.0 nanograms per milliliter, or Ketoprofen in a concentration below 1 nanogram per milliliter of serum or plasma, or the presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(2) Any horse to which an NSAID has been administered shall be subject to having a blood sample(s), urine sample(s) or both taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) or the presence of other drugs which may be present in the blood or urine sample(s).